

**STATE OF MAINE**  
**THE SUPREME JUDICIAL COURT**  
**Sitting as the Law Court**

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**DOCKET NO. Fed-22-73**

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**STEVEN KNEIZYS,**  
**PLAINTIFF/APPELLANT**

**vs**

**FEDERAL DEPOSIT INSURANCE CORPORATION,**  
**As Receiver for Washington Mutual Bank, Henderson, Nevada**  
**DEFENDANT/APPELLEE <sup>1</sup>**

**And Parties In Interest / Former Parties also docketed:**  
**JAMES BOHANON and VICKI MCLAUGHLIN;<sup>2</sup>**  
**UNITED STATES (ATTY FOR THE DISTRICT OF MAINE)<sup>3</sup>, APPELLEES**

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**ON CERTIFIED QUESTION FROM THE WESTERN DISTRICT OF**  
**WASHINGTON AT SEATTLE, Dkt No: C20-1402RSL (PACER 2:20-cv-01402-RSL)**

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**APPELLANT'S BRIEF**

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Dated: May 23, 2022

Respectfully Submitted by:



Steven Kneizys, Appellant, Pro Se  
87 Lagare Street  
Palm Coast, FL 32137

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**Representation of parties, as per superscripts, above:**

- 1. Represented in the Western District of Washington by: Miller Nash LLP,  
Garret S. Ledgerwood, Esq., 111 S.W. Fifth Avenue, Suite 3400, Portland, Oregon  
97204, Telephone: (503) 224-5858, Email: garrett.ledgerwood@millernash.com**
- 2. Represented in the Western District of Washington by:  
Charles R Horner, 1911 SW Campus Dr, NO 727, Federal Way, Washington 98023**
- 3. Andrew K. Lizotte, AUSA, Chief, Civil Division, 202 Harlow Street, Bangor,  
Maine 04401 T: 207.262.4636, E: Andrew.Lizotte@usdoj.gov**

**NOTE: Case transferred from the District of Nevada, Docket # 2:19-cv-01499**

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\*\*\* Only cited indirectly within another citation.

## **STATEMENT OF THE CASE**

Washington Mutual Bank (“WAMU”) foreclosed on Alfreda Morrison's mortgage in Washington County (in MACHias, Maine) Superior Court Docket MACSC-RE-2005-8 and subsequently conveyed Parcels A, C and D<sup>1</sup> to Joyce Lizotte (see Appendix Exhibit G, “the deed”, the subject of the certified question.) The mortgage only described Parcel A (Lot 11) in the legal description exhibit referenced in the legal description section of the mortgage.

Plaintiff's Grantor for Parcel A, Bank of NY Mellon, foreclosed on Joyce Earle (a/k/a Joyce Lizotte, mortgage similarly describing Parcel A) in Washington County District Court in Calais, District Court Docket RE-2012-8 (and Earle subsequently conveyed to Plaintiff Steven Kneizys her interest in all parcels.)

Plaintiff sought to Quiet Title on just Parcel B in MACSC-RE-2015-20, naming JP Morgan Chase Bank, NA, (“Chase”) as defendant and also served Elizabeth Rice, Norman Morrison Jr, and Franklin Morrison (Heirs of Alfreda Morrison). Heirs conveyed any interest they had in any of the parcels. Chase waived Subject Matter Jurisdiction of 12 U.S. Code § 1821(d)<sup>2</sup>, and after putting in a disclaimer to Parcel B the case was dismissed by Joint Stipulation.

Plaintiff sought to quiet title to Parcels A, C and D in MACSC-RE-2016-13,

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1 The parcels are described and depicted in the Amended Complaint, pages 4-5,8 Appendix pgs 48-49,52

2 Such waiver is legally inconsequential. A per *United States v. Cotton*, 535 US 625, 630 (2002), “This latter concept of subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court.

but only successfully asserted title to Parcels A and B, being evicted from C & D.

Plaintiff appealed MACSC-RE-2016-13 to the Maine Supreme Judicial Court, as the trial court ruling declared the heirs not to be parties (despite having been served, answered, and having been part of the Motion to Join Parties.) Also, there was Declaratory relief regarding the activities of Washington Mutual and they were not a party. The Supreme Judicial Court, docket Was-17-269, affirmed the trial court ruling in Memo of Decision Mem 18-4.

Plaintiff named Chase as defendant in MACSC-RE-2018-6 as a result of the eviction in MACSC-RE-2016-13 (for, inter alia, Breach of Covenants of Warranty and Quiet Enjoyment,) but this time they filed an MTD based on Subject Matter Jurisdiction of 12 U.S. Code § 1821(d). Days later Plaintiff converted the claim to a FIRREA claim with the FDIC (“REQUEST NUMBER: 2010980900” received by the FDIC on September 10, 2018), and dismissed the State action with Chase without prejudice by Stipulation before an answer to the complaint was submitted. The Plaintiff and defendant FDIC were unable to successfully find a path to a resolution in this matter, and the FIRREA claim's extension of time expired June 28, 2019 (confirmed by letter from the FDIC to Plaintiff dated June 27, 2019.) The FIRREA judicial review case was filed in the District of Nevada (where WAMU had its official corporate home) and was transferred to the Western District of Washington at Seattle (where Washington Mutual Bank had its “principal place of business”) to comply with the subject-matter strictures of FIRREA.

## **STATEMENT OF ISSUE PRESENTED FOR REVIEW**

The issue is presented by the Western District of Washington at Seattle, as the case turns on what warranties (if any) are contained in Exhibit G (deed entitled “Warranty Deed” but lacking the phrase “Warranty Covenants” (33 M.R.S. §764).) The Federal Deposit Insurance Corporation is “in the shoes of” Washington Mutual Bank of Henderson, Nevada, as Receiver<sup>3</sup>, resolving the country's largest bank failure. The certified question presented by the Western District of Washington:<sup>4</sup>

The undersigned therefore certifies the questions of whether, under Maine law, any warranty is implied by the use of the term "Warranty Deed" to describe an instrument which "grants . . . real property with the buildings and improvements thereon . . . being the same premises conveyed to GRANTOR" by prior deed (Dkt. # 91-1 at 105) and, if so, which warranty or warranties are implied. The undersigned respectfully requests the Law Court to provide instructions concerning such questions of state law pursuant to 4 M.R.S. § 57 and Rule 25 of the Maine Rules of Appellate Procedure.

## **SUMMARY OF ARGUMENT**

Plaintiff's argument is extremely simple – Exhibit G is a full Warranty Deed even though 1) it does not have the warranties spelled out as they were before the

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<sup>3</sup> See *Sharpe v. FDIC*, 126 F. 3d 1147, 1152 (9th Cir. 1997):

At the outset, we note that as receiver the FDIC "steps into the shoes" of the failed financial institution, assuming all the rights and obligations of the defunct bank. \*\*\* We will therefore consider the actions of [the defunct bank] to be those of the FDIC.

<sup>4</sup> See the paragraph in ECF 106 p 8, Appendix p. 22, and the paragraphs preceding it for a more complete rationale for the question.

Short Forms Deeds act, and 2) it does not contain what the trial court called “magic words”, to wit, “with Warranty Covenants”.

## **STANDARDS OF REVIEW**

### ***CERTIFIED QUESTION FROM A FEDERAL COURT***

As per *Dinan v. Alpha Networks Inc.*, 2013 ME 22, 60 A. 3d 792,796 (2013):

[¶ 10] Title 4 M.R.S. § 57 authorizes us to consider certified questions from federal courts in certain circumstances. Maine Rule of Appellate Procedure 25 implements the statute.

[¶ 11] We may consider the merits of a certified question from the United States District Court and, in our discretion, provide an answer if (1) there is no dispute as to the material facts at issue; (2) there is no clear controlling precedent; and (3) our answer, in at least one alternative, would be determinative of the case. *Fortin v. Titcomb*, 2013 ME 14, ¶ 3, 60 A.3d 765, 2013 WL 323711; *Darney v. Dragon Prods. Co., LLC*, 2010 ME 39, ¶ 10, 994 A.2d 804.

[¶ 12] Exercise of our discretion to answer a certified question is guided by our observation that promotion of federal-state comity counsels that

[w]herever reasonably possible, the state court of last resort should be given opportunity to decide state law issues on which there are no state precedents which are controlling or clearly indicative of the developmental course of the state law. Such approach would (1) tend to avoid the uncertainty and inconsistency in the exposition of state law caused when federal Courts render decisions of State law which have an interim effectiveness until the issues are finally settled by the state court of last resort; and (2) minimize the potential for state-federal tensions arising from actual, or fancied, federal Court efforts to influence the development of State law.

*White v. Edgar*, 320 A.2d 668, 675 (Me. 1974).

## ***EVALUATING DEEDS/INSTRUMENTS/CONTRACTS***

In the case of *Harvey v. Furrow*, 2014 ME 149, ¶ 8-9, 107 A.3d 604:

We have previously stated, " The cardinal rule for the interpretation of deeds and other written instruments is the expressed intention of the parties, gathered from all parts of the instrument, giving each word its due force, *and read in the light of existing conditions and circumstances.*" *Sleeper v. Loring*, 2013 ME 112, ¶ 16, 83 A.3d 769 (emphasis added) (quoting *Perry v. Buswell*, 113 Me. 399, 401, 94 A. 483 (1915)).

In *Monmouth v Plimpton*, 77 Me. 556 (1885), 560, 1 A 693, 695, the Maine Supreme Judicial Court said that, when evaluating generic clauses that convey property in a deed, "If there is any doubt as to the meaning of the language used, it must be taken most strongly against the grantor and in favor of the grantees." This is still good law, as the court reminds us in *Beckerman v. Conant*, 2017 ME 142, ¶17, 166 A.3d 1006,1011 (2017) of “the rule of construction that ambiguities in a deed are to be resolved against the grantor and in favor of the grantee.”

When evaluating contracts/deeds/instruments, etc., as per *Farrington's Owners' Ass'n v. Conway Lake Resorts, Inc.*, 2005 ME 93, 878 A.2d 504, 509:

See *Leavens v. Metro. Life Ins. Co.*, 135 Me. 365, 371, 197 A. 309, 311 (1938) (“[I]n contracts susceptible of two conflicting constructions, that which accords with good faith and fair-dealing between the parties must be adopted.”).

## **ARGUMENT**

### ***THE “WARRANTY DEED”***

The deed (Exhibit G) heading says “Warranty Deed”. The expectation is, of course, that the FDIC has offered a true Warranty Deed (as per 33 M.R.S. §763)

while the FDIC is claiming they only offered a “Quitclaim Deed” or “Bare Grant”. This is at best a case of “Seller's Remorse”, regretful of making promises it no longer desires to stand by, and at its worst it is fraud. It is impossible to get a deed registered in Maine without the mail being used, as deeds are returned by mail, tax forms are sent to the state office by mail, copies of the new owner information are forwarded to the towns by mail, etc, and the deeds themselves are published by wires to the Internet. The thing is, once you promise a “Warranty Deed” but later claim no warranty was ever offered, and the mails/wires become involved, federal fraud statutes kick in. Citing *Durland v. United States*, 161 U. S. 306 (1896), the high court's first mail fraud case, in *Neder v. United States*, 527 US 1, 24 (1999):

[W]e construed the statute to "includ[e] everything designed to defraud by representations as to the past or present, or suggestions and promises as to the future." *Id.*, at 313.

Of course Unfair trade practices is another legal remedy available to victims of such a scam. The point here is no matter what, interpreting Exhibit G to have no warranties would mean a lack of good faith and fair dealing as most certainly your typical homebuyer is going to look at the deed and truly and reasonably think they were being offered a full Warranty Deed. Interpreting it as a true, full “Warranty Deed” is consistent with good faith and fair dealing. As per *Farrington's Owners' Ass'n v. Conway Lake Resorts, Inc.*, *Supra*, 509:

See *Leavens v. Metro. Life Ins. Co.*, 135 Me. 365, 371, 197 A. 309, 311 (1938) (“[I]n contracts susceptible of two conflicting constructions, that which accords with good faith and fair-dealing between the parties must be adopted.”).

The deed itself is not ambiguous at all on the warranties. The heading is “Warranty Deed”, just as the “Short Forms” sample deed has in 33 M.R.S. §775. Nowhere in Exhibit G is there any contradiction, reservation, or modification to this promise in the heading of a Warranty Deed. If somehow the lack of the words “Warranty Covenants” were interpreted as an ambiguity, it has to be resolved in favor of the grantee. In addition to the cases already cited, as per *C COMPANY v. City of Westbrook*, 269 A. 2d 307, 309 Me: Supreme Judicial Court 1970:

It is a familiar rule of construction that in a question of ambiguity the deed must be construed more favorably to the Grantee. *S. E. & H. L. Shepherd Co. v. Shibles*, 100 Me. 314, 61 A. 700 (1905); *Chapman v. Hamblet*, 100 Me. 454, 62 A. 215 (1905); 26 C.J.S. Deeds § 82.

But, most likely, the deed is unambiguously a Warranty Deed because a lack of conflicting phrases isn't ambiguous.<sup>5</sup>

The titles on deeds in Maine, prior to the adoption of the Short Forms, usually began with something like “KNOW ALL MEN THESE PRESENTS ...” ... not very helpful at all to anyone! The Legislature was brilliant in including titles on all the statutory forms. Other states that have not done so are missing out. This sea-change allows for folks to know at least generally what kind of deed the deed is without having to search all the verbiage. As noted by the Texas Supreme Court in *E. H. Perry & Co. v. Langbehn*, 113 Tex. 72, 252 S.W. 472, 474-475:

The title, like every other portion of a contract, may be looked to in determining its meaning. \* \* \* In fact, the purpose of giving a person or thing a name is to

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<sup>5</sup> See *Sleeper v. Loring*, 2013 ME 112, ¶ 16, 83 A.3d 769 ("When interpreting a deed whose terms are not ambiguous, we do not speculate about the grantors' actual or probable objectives; rather, we focus on what is expressed within the four corners of the deed.").

distinguish that person or thing, or class from others.

In Maine, in the case of *Harvey v. Furrow*, Supra, ¶ 8-9:

We have previously stated, " The cardinal rule for the interpretation of deeds and other written instruments is the expressed intention of the parties, gathered from all parts of the instrument, giving each word its due force, *and read in the light of existing conditions and circumstances.*" *Sleeper v. Loring*, 2013 ME 112, ¶ 16, 83 A.3d 769 (emphasis added) (quoting *Perry v. Buswell*, 113 Me. 399, 401, 94 A. 483 (1915)).

Given no ambiguities and a promise of a Warranty Deed from the heading, it is pretty clear the parties at the time of the contract intended it to be a Warranty Deed.

Exhibit G cannot be confused with any other deed found in 33 M.R.S. §775.

A Warranty Deed is a well-defined instrument in the State of Maine<sup>6</sup>. “The covenant of seisin, the covenant of the right to convey, the covenant of warranty, the covenant of quiet enjoyment, and the warranty of freedom from encumbrances accompany every warranty deed...”, *McCormick v. Crane*, 2012 ME 20, ¶ 6, 37 A.3d 295. The FDIC will argue that without the phrase “Warranty Covenants” that Exhibit G is merely a quitclaim deed, that those words are required for the deed to satisfy the requirements of the Short Forms Deed act. Suppose that was true, you must have “Warranty Covenants” in a short form Warranty Deed – wouldn't that be clearly spelled out in the statute? It isn't there!<sup>7</sup> Adding the phrase “Warranty

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<sup>6</sup> *Gillespie v. Worcester*, 322 A. 2d 93 (Me. 1974):

Our court has long been guided by the rule of giving common meaning to the words and phrases of an instrument. *Machine Makers v. Patents Co.*, 131 Me. 356, 163 A. 167 (1932); *Johnson v. Insurance Company*, 131 Me. 288, 161 A. 496 (1932); *Union Water Power Co. v. Lewiston*, 101 Me. 564, 65 A. 67 (1906).

<sup>7</sup> And there are no detailed instructions on corporations versus individuals, joint tenants versus tenants in common, or a mixture thereof. It is obvious that the statute requires interpretation by grantors and grantees as to what to do given the circumstances.

Covenants” to a bare grant deed turns it into a warranty deed (33 M.R.S §764), but the FDIC will have you believe that their “Warranty Deed” is not a “Warranty Deed” because it doesn't contain the phrase “Warranty Covenants” (§764), which is a proxy for Warranty Deed (§763) as defined by the Statute!

If it was true that “Warranty Covenants” was a required phrase in a short form Warranty Deed then the Law Court must come to believe that the title “WARRANTY DEED” as defined in the statute is of no substance and the words “Warranty Covenants” are strictly mandatory. (Maine's Short Form Deeds Act was enacted "For the purpose of avoiding the unnecessary use of words in deeds or other instruments relating to real estate ..." as per 33 MRS §762, not to force the use of duplicative wording.) This would make 33 MRS §763 insignificant or even mere surplusage as by 33 MRS §764 the phrase “Warranty Covenants” all by itself in a deed, with no other help, would be all you need to create a General Warranty Deed and there would be no need to look further. This 'surplusage' interpretation violates cardinal principles<sup>8</sup>. The statute's section §761 (of 33 M.R.S.) states:

The forms set forth in section 775 may be used and shall be sufficient for their respective purposes. They shall be known as "Statutory Short Form Deeds" and

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<sup>8</sup> See *Cent. Me. Power Co. v. Devereux Marine, Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262. ("All words in a statute are to be given meaning,' and no words are to be treated as surplusage 'if they can be reasonably construed.' *Davis Forestry Prods., Inc. v. DownEast Power Co.*, 2011 ME 10, ¶ 9, 12 A.3d 1180")

Also, see *TrW Inc. v. Andrews*, 534 US 19, 31 (2001):

It is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker*, 533 U. S. 167, 174 (2001) (internal quotation marks omitted); see *United States v. Menasche*, 348 U. S. 528, 538-539 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.' " (quoting *Montclair v. Ramsdell*, 107 U. S. 147, 152 (1883))).

may be referred to as such. They may be altered as circumstances require, and the authorization of such forms shall not prevent the use of other forms. Wherever the phrase, "incorporation by reference" is used in this chapter, the method of incorporation as indicated in said forms shall be sufficient, but shall not preclude other methods. This chapter may be cited as the "Short Form Deeds Act".

Given that the short forms “may be altered” and that these forms “shall not prevent the use of other forms” it makes more sense why 33 M.R.S. §763 is there, it is a way to avoid unnecessary words, a guide, a starting point, a framework, it is certainly not a list of immutably required keywords, sentences and phrases.<sup>9</sup>

In 33 M.R.S §775, the statutory short form Warranty Deed is:

#### 1 Warranty Deed

A.B. of ....., ..... County, ....., (being unmarried), for consideration paid, grant to  
C.D. of ....., ..... County, ....., with Warranty Covenants, ..... the land in ....., .....  
County, Maine.  
(description and encumbrances, if any)  
E.F., spouse of the grantor, releases all rights in the premises being conveyed.  
Witness .... hand and seal this .... day of .... (here add acknowledgment)

Therefore, the heading “Warranty Deed” is part of the substance by statute.

Finally, the FDIC wants to resolve this problem of the Plaintiff having been evicted from 2 of the 3 granted parcels by interpreting the “Warranty Deed” as having no warranties. This re-imagining of the terms of the deed (and intentions of the parties) involves a condition subsequent, as the grantee and remote grantees lose their remedy as rights to recovery for eviction are forfeited (or found to have never existed.) However, interpreting Exhibit G, the deed entitled “Warranty

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<sup>9</sup> For example, the “Hand and Seal” is not required, see 33 M.R.S. §774. Also, the “E.F., spouse of the grantor” release is not required for unmarried persons or corporations, and the parenthetical “(being unmarried)” is similarly not required, yet the parentheticals “(description and encumbrances, if any)” and “(here add acknowledgment)” are required, but the statute doesn't define all that are optional and all that are required – that is left to the parties and the courts.

Deed”, as a Warranty Deed allows the grantee (and remote grantees) causes of action. Basically, the FDIC wants to convert or declare what was appears to be a Warranty Deed into a Quitclaim Deed without covenants, so that for the condition subsequent (eviction) has no recourse and thus enable a forfeiture of contract and FIRREA recovery rights to the Grantor. In *C COMPANY v. City of Westbrook*, Supra, 309-310 the Law Court stated:

We have frequently applied the rule of construction that the law looks with disfavor on an interpretation which permits a forfeiture. If a deed can reasonably admit of two constructions, one which would permit forfeiture to the Grantor and one which would not, the Court must construe the deed most strongly against the forfeiture. *Rumford Falls Power Co. v. Waishwell*, 128 Me. 320, 147 A. 343 (1929); *Inhabitants of Frenchville v. Gagnon*, 112 Me. 245, 91 A. 951 (1914); 28 Am.Jur.2d, Estates, § 140.

Interpreting Exhibit G, the deed entitled “Warranty Deed”, as a Warranty Deed prevents the forfeiture of treasure/remedy to the Grantors from the remote and original Grantees.

### **CONCLUSION**

The answer to the certified question must be that the deed in question, Exhibit G, the conveyance from Washington Mutual Bank to Joyce Earle, is a full Warranty Deed as defined in 33 M.R.S. §764. It is the only interpretation that it consistent with the rules of interpretation/ambiguity/construction, concepts of good faith and fair-dealing, and the principle that ambiguities and inconsistencies must be found in favor of the grantee. To find otherwise is an open invitation to remorseful sellers and fraudsters alike.

(Signature on Cover)

## **CERTIFICATE OF SERVICE**

I, Steven Kneizys, Appellant/Plaintiff, hereby certify a copy of the Appendix is being sent by First Class mail (or faster) along with the 2 copies of the Appellant's Brief to the following addresses:

Appellee: For the Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank,  
Garrett S Ledgerwood, Esq., 111 SW 5th Ave 3400 U.S. Bancorp Tower, Portland OR 97204

Appellee: For dismissed defendants James Bohanon and Vicki McLaughlin,  
Charles R Horner, Law Office of Charles R Horner PLLC 1911 SW Campus Dr, NO 727,  
Federal Way, Washington 98023

Appellee: For the United States, the US Attorney for the State of Maine, as per email,  
Andrew K. Lizotte, Chief, Civil Division, 202 Harlow Street, Bangor, Maine 04401,  
T: 207.262.4636, E: Andrew.Lizotte@usdoj.gov

Dated this 23rd day of May, 2022.



Steven Kneizys, Appellant, Pro Se  
87 Lagare St.  
Palm Coast, FL 32137  
(610)256-1396